

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**HARTENSE LAVERNE COLE**

Claimant

VS.

**GOODYEAR TIRE & RUBBER COMPANY**

Respondent

AND

**LIBERTY MUTUAL INSURANCE COMPANY**

Insurance Carrier

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Docket No. 265,249

**ORDER**

Claimant appeals the May 29, 2002 preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. Claimant was denied medical treatment after alleging that the injuries suffered on March 15, 2001, to her right calf caused her additional problems to both knees and to her low back. Claimant's request for medical treatment was denied by the Administrative Law Judge.

**ISSUES**

Are claimant's knee and back injuries a direct consequence of her work-related calf injury, giving rise to the jurisdictional issue of whether claimant suffered accidental injury arising out of and in the course of her employment on the date alleged?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant suffered accidental injury on March 15, 2001, when a tire fell, striking her behind her right calf. The tire caused a hematoma which became infected, requiring that claimant undergo treatment and ultimately surgery and a skin graft. Claimant was provided treatment by several doctors through the St. Francis Hospital and Medical Center emergency room and through referrals for the surgical treatment. Her primary treating

doctor was Robert T. McElroy, M.D., of the Tallgrass Prairie Surgical Specialists, P.A. Dr. McElroy first examined claimant on March 23, 2001, diagnosing a hematoma to the upper posterior aspect of the right calf. The treatment continued through September 2001, with claimant seeing various health care providers in addition to Dr. McElroy, including James L. McGovern, Jr., M.D., Donald T. Mead, M.D., Gerard Coulon, M.D., Brent E. Steward, M.D., Brice Hamilton, M.D., Stanley Hornbaker, M.D., and Michael T. McCoy, M.D. Claimant was returned to work without restrictions on September 24, 2001, with a note signed by Dr. McCoy.

Claimant alleges her back became symptomatic immediately after the injury to her leg, even though there were no complaints contained in the medical records for several months. Dr. McElroy's medical note of June 19, 2001, mentions that claimant is undergoing physical therapy for the leg and the back. However, the referral note to physical therapy of June 8, 2001, also signed by Dr. McElroy, mentions only a referral for treatment to the leg. How claimant came to undergo physical therapy for the back is unclear in the record, as there is no physician referral for that treatment.

Claimant's history is significant in that she has had both back and bilateral knee problems in the past. Several years prior to this injury, claimant was advised by Dr. McElroy that she would be a candidate for total knee replacement due to the degenerative arthritis in her knees.

Also, other than the one mention of the back by Dr. McElroy above discussed, there is no mention in any of the medical records of any of the physicians of problems with claimant's back or knees.

The only mention of the ongoing problems alleged by claimant is contained in the August 10, 2001 report of Sergio Delgado, M.D., which is regarding his August 9, 2001 examination of claimant. Claimant was referred to Dr. Delgado by her attorney for an independent medical evaluation. Dr. Delgado diagnosed low back complaints and bilateral knee complaints which, in his opinion, "may be related to the injury sustained." He goes on to state further that the nature of the injury "could have started her aggravated degenerative changes involving both knees."

He also noted that claimant's abnormal gait "may have developed lumbosacral complaints."

Claimant apparently advised Dr. Delgado that her symptoms in her knees and low back had increased significantly since the injury of March 15, 2001. However, none of the other medical reports, including the ongoing treatment notes of Dr. McElroy, support this contention.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g).

Additionally, although a work-related aggravation of a preexisting condition can be compensable (Harris v. Cessna Aircraft Co., 9 Kan. App. 2d 334, 678 P.2d 178 (1984)), workers' compensation is not intended to provide compensation for debilitating medical conditions not created or exacerbated by work-related accidents or conditions. Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625 (1972); West-Mills v. Dillon Companies, Inc., 18 Kan. App. 2d 561, 859 P.2d 382 (1993).

In this instance, the only medical evidence claimant has produced regarding a connection between her low back and bilateral knee complaints, and the accident of March 15, 2001, is the report of Dr. Delgado. Dr. Delgado's report couches his opinion in the terms of "may be", "could have", and "may have". Dr. Delgado's opinions are not expressed within a reasonable degree of medical probability. Additionally, the fact that the medical reports of all the other doctors contain no indication that claimant ever alleged problems with her bilateral knees and make only one minor reference to claimant's receiving physical therapy to her back is additional evidence that claimant's complaints are not connected to the accident of March 15, 2001.

The Board, therefore, finds that claimant has failed to prove that her request for treatment to the low back and bilateral knees results from an accident which arose out of and in the course of her employment with respondent. Therefore, the Order of the Administrative Law Judge denying claimant medical treatment should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated May 29, 2002, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2002.

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BOARD MEMBER

c: Neil A. Dean, Attorney for Claimant  
Patrick M. Salsbury, Attorney for Respondent  
Bryce D. Benedict, Administrative Law Judge  
Director, Division of Workers Compensation